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3 BILL NO. S-78-04-27

4 SPECIAL ORDINANCE NO. S-

65-78

5 AN ORDINANCE approving an Agreement with  
6 AM-CAL Construction Corp., for construc-  
7 tion of a sanitary sewer for Kinney Shoes.

8 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,  
9 INDIANA:

10 SECTION 1. That the Agreement dated April 7, 1978, between the  
11 City of Fort Wayne, by and through its Mayor and the Board of Public  
12 Works and AM-CAL Construction Corp., for:

13 Sanitary sewer to serve the proposed new Kinney Shoe  
14 Store, which is planned for North side of East State  
15 Blvd., 400' West of Maplecrest Road,

16 SANITARY SEWER

17 "Beginning at an existing sanitary sewer manhole located  
18 within the existing 60 feet Indiana and Michigan Elec-  
19 tric Company Transmission line right-of-way and 190+LF  
20 South of the centerline of Hicksville Road and East  
21 State Blvd., all located within the Northeast 1/4 of  
22 Section 33, T 31 N, R 13 E; thence due North 200+LF to  
23 a proposed manhole located 35+LF West of and 25+LF North  
24 of the centerline intersection of said Indiana and Mich-  
25 igan Electric Company right-of-way and Hicksville Road;  
26 thence Northeast 800+LF terminating at a proposed man-  
27 hole located 300+LF West of and 35+LF North of the cen-  
28 terline intersection of Maplecrest Drive and said  
29 Hicksville Road."

30 of which the developer shall pay the entire cost and expense of the con-  
31 struction of said sewer, all as more particularly set forth in said agree-  
32 ment which is on file in the Office of the Board of Public Works and is  
33 by reference incorporated herein, made a part hereof and is hereby in all  
34 things ratified, confirmed and approved.

35 SECTION 2. That this Ordinance shall be in full force and effect  
from and after its passage and approval by the Mayor.

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APPROVED AS TO FORM  
AND LEGALITY,

*Cherry J. Borden*  
CITY ATTORNEY  
*Asst. Atty.*

Read the first time in full and on motion by Burns, seconded by Hunter, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 4-25-78

Charles W. Winters  
CITY CLERK

Read the third time in full and on motion by Nuckols, seconded by Hinga, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	<u>0</u>	_____	<u>1</u>	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>HINGA</u>	<u>X</u>	_____	_____	_____	_____
<u>HUNTER</u>	_____	_____	_____	<u>X</u>	_____
<u>MOSES</u>	<u>X</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	<u>X</u>	_____	_____	_____	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: 5-8-78

Charles W. Winters  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as  
(ZONING MAP) (~~GENERAL~~) (~~ANNEXATION~~) (~~SPECIAL~~) (~~APPROPRIATION~~) ORDINANCE  
(~~RESOLUTION~~) No. 8-65-78 on the 8th day of May, 1978

ATTEST: (SEAL)

Charles W. Winters  
CITY CLERK

Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 9th day of May, 1978 at the hour of 11:30 o'clock A M., E.S.T.

Charles W. Winters  
CITY CLERK

Approved and signed by me this 11th day of May, 1978 at the hour of 2:30 o'clock 2 P.M., E.S.T.

Robert E. Armstrong  
MAYOR

Bill No. S-78-04-27

REPORT OF THE COMMITTEE ON PUBLIC WORKS

We, your Committee on Public Works to whom was referred an Ordinance  
approving an Agreement with AM-Cal Construction Corp. ~~for construction Corp.~~  
for construction of a sanitary sewer for Kinney Shoes

have had said Ordinance under consideration and beg leave to report back to the Common  
Council that said Ordinance Do PASS.

JOHN NUCKOLS - CHAIRMAN

PAUL M. BURNS - VICE CHAIRMAN

WINFIELD C. MOSES, JR.

DONALD J. SCHMIDT

JAMES S. STIER

5-8-78  
CONCURRED IN

DATE 5-8-78 CHARLES W. WESTERMAN, CITY CLERK

AGREEMENT

FOR

SEWER EXTENSION

65-293-6  
4-17-78 H.I.  
April

THIS AGREEMENT, made in triplicate this 17 day of MARCH, 1978, by and between AM-CAL CONSTRUCTION CORP., hereinafter referred to as "DEVELOPER", and the CITY OF FORT WAYNE, INDIANA, an Indiana municipal corporation, hereinafter referred to as "CITY",

WITNESSETH:

WHEREAS, the Developer desires to construct a sanitary sewer described as follows:

Sanitary Sewer

beginning at an existing sanitary sewer manhole located within the existing 60 feet Indiana and Michigan Electric Company Transmission line right-of-way and 190+LF South of the centerline of Hicksville Road and East State Blvd., all located within the Northeast 1/4 of Section 33, T 31 N, R 13 E; thence due North 200+LF to a proposed manhole located 35+LF West of and 25+LF North of the centerline intersection of said Indiana and Michigan Electric Company right-of-way and Hicksville Road; thence Northeast 800+LF terminating at a proposed manhole located 300+LF West of and 35+LF North of the centerline intersection of Maplecrest Drive and said Hicksville Road.

Said sanitary sewer shall be 8" in diameter, in accordance with plans, specifications, and profiles hertofore submitted to the City and now on file in the office of the Chief Engineer of the Water Pollution Control Engineering Department of the City and known as East State Blvd.-Maplecrest Road Intersection Sanitary Sewer, which plans, specifications and profiles are by reference incorporated herein and made a part hereof, which sewer will serve not only land in which the Developer has an interest, but also adjoining land areas.

WHEREAS, the cost of construction of said sewer is represented to be \$26,795.00 composed of \$23,995.00 for construction costs and \$2,800.00 for consultant engineering.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The DEVELOPER shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the CITY, under private contract with CITY approval. All work and materials shall be inspected by the CITY and conform with all CITY standards and specifications. Upon completion, said sewer shall become the property of CITY and all further maintenance thereafter shall be borne by the CITY.

## 2. COST OF CONSTRUCTION

The DEVELOPER agrees to pay the entire cost and expense of construction of said sewer, in cash, and to hold the CITY harmless from any liability for claims connected therewith.

## 3. AREA OF DEVELOPER - To Wit:

Beginning on the centerline of East State Blvd. at a point situated 261.5 feet southwesterly of the intersection of said centerline with the East line of Section 33, Township 31 North, Range 13 East, Allen County, Indiana; thence Southwesterly on and along the centerline of East State Blvd, being a regular curve to the right having a radius of 1380 feet, an arc distance of 266.42 feet (recorded 271.4 feet) (the chord of which bears S 61°-19' W for a length of 266.0 feet) (bearings in this description are based on a deed bearing of N 88°-00' E for the North lines of said Lots #1 & #2) to the Southwest corner of said Lot #2; thence N 01°-36' E (recorded "North"), on and along the West line of said Lot #2, a distance of 406.50 feet (recorded 405 feet) to the Northwest corner of said Lot #2; thence N 88°-00' E, on and along the North lines of said Lots #2 & #1, a distance of 167.3 feet (recorded 167 feet) to the Northeast corner of said Lot #1; thence S 10°-54' (recorded S 13°-12' E), a distance of 289.7 feet (recorded 294.55 feet) to the true point of beginning, containing 1.648 acres of land, subject to legal right-of-way for East State Blvd.

As the DEVELOPER will pay for the entire cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer, or the use thereof, by the present or future owners of said aforescribed real estate, except as to such standard tap-in and inspection fees as are customarily charged by the CITY for connections to City sewer main.

## 4. CHARGE AGAINST EXCESS AREA

Said sewer, however, also serves an additional or excess area as shown on the attached Exhibit "A". In the event any present or future owner of real estate shall at any time within 15 years of the date of this Agreement, desire to use said sewer or any extension thereof, whether by direct tap or through the extension or connection of lateral or local lines to service such land, CITY, through its duly constituted authorities, before permitting such use, shall require by contract or assessment, as may be appropriate, that such owner or owners of said excess area pay to the CITY, in addition to the cost of standard tap-in and inspection fees, the sum of \$0.11645 per sq. ft. for the area served by such connection and use, which represents the pro rata share of the cost of the extension of the CITY sewer to said area. Any amount so collected by the CITY shall be paid by the CITY within sixty (60) days of the receipt thereof to the DEVELOPER. DEVELOPER and CITY, by and between themselves mutually agree that DEVELOPER may assign its right to receive the reimbursement proceeds as and when collected by the CITY as called for under the within Agreement, provided DEVELOPER shall notify the CITY in writing of such assignment within fifteen (15) days of making same and provided further that such assignment shall not include an assignment to a receiver or in bankruptcy.

An area connection charge of \$300.00 per acre must be paid to CITY at the time of connection by any such owner or owners of any excess area sought to be served by the herein described sanitary sewer. This area connection charge is

in addition to the local charge as set forth above, and represents the over-sizing cost expended by CITY for the Pierson Ditch Interceptor Sanitary Sewers.

5. BOND

This contract is subject to DEVELOPER furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer, said bond to serve as a guarantee of said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the CITY.

6. LIMITATION ON USE

Said sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water run-off caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

The DEVELOPER, for itself, its successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by CITY of any territory now or hereafter owned by him, as described in Article 3 herein.

The DEVELOPER further agrees that any deeds, contracts, or other instruments of conveyance made by the DEVELOPER, its successors or assigns transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the DEVELOPER, his successors and assigns by any grantee, vendee, or contract purchaser shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee or contract purchaser and their successors in title.

The DEVELOPER further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of CITY as hereinafter provided. Any owner or owners of which is now, or hereafter, located outside the corporate limits of CITY who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by CITY of such land or if the territory in which it is located or of the area served by said sewer.

8. GOVERNING STATUTE


It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (I.C. 19-2-7-16, I.C. 19-2-7-17 and I.C. 19-2-7-18 ), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

9. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of CITY, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

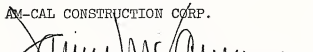
IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

ATTEST:


  
Secretary (Corporate)  
Luis Perez

DEVELOPER:

AM-CAL CONSTRUCTION CORP.

By:   
President - James J. McManney

APPROVED AS TO FORM AND LEGALITY

  
Associate City Attorney

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Robert E. Armstrong, Mayor

BOARD OF PUBLIC WORKS

By: \_\_\_\_\_  
Henry P. Wehrenberg, Chairman

By: \_\_\_\_\_  
Ethel H. LaMar, Member

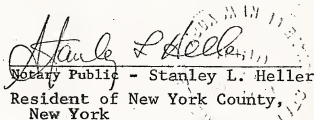
ATTEST:

By: \_\_\_\_\_  
Max G. Scott, Member

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK )

Before me, the undersigned, a Notary Public, in and for said County and State,  
personally appeared JAMES J. MCTAMNEY, President of Am-Cal Construction Corp.,  
who acknowledged the execution of the foregoing instrument for sewer extension as  
and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 27<sup>th</sup> day of March, 1978.

  
Notary Public - Stanley L. Heller  
Resident of New York County,  
New York

My Commission Expires:

STANLEY L. HELLER  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 25,200,000  
Commission Expires March 30, 1980

STATE OF INDIANA )  
 ) SS:  
COUNTY OF ALLEN )

Before me, the undersigned, a Notary Public, in and for said County and State,  
personally appeared ROBERT E. ARMSTRONG, HENRY P. WEHRENBURG, ETHEL H. LAMAR,  
and MAX G. SCOTT, known to me to be the Mayor, the members of the Board of  
Works of the City of Fort Wayne, Indiana, respectively, and the voluntary act  
and deed of said CITY.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 1978.

\_\_\_\_\_  
Notary Public

My Commission Expires:

Resident of \_\_\_\_\_  
County

This instrument prepared by Philip R. Boller, Chief Water Pollution Control Engineer.

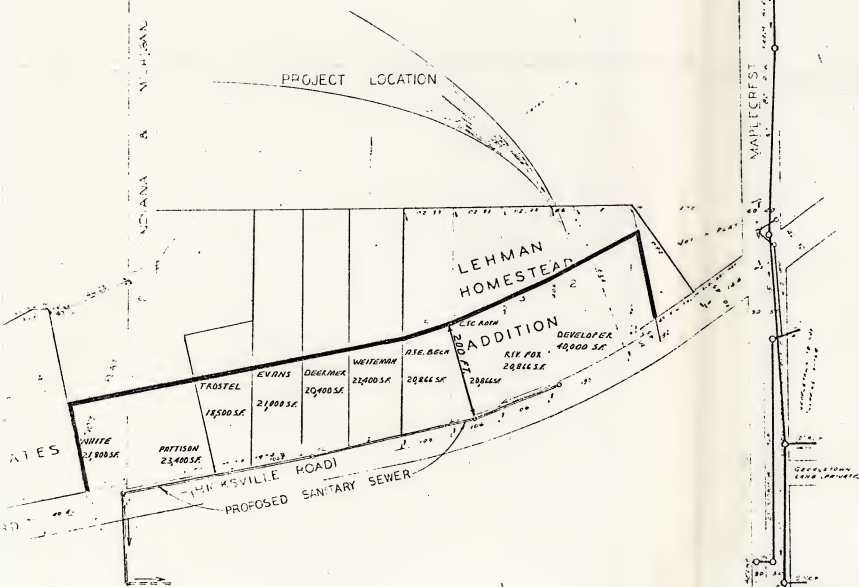


COMPUTATION OF ASSESSMENT FOR LOCAL SANITARY SEWER SHOWN IN EXHIBIT "A"

<u>Benefitted Area See Exhibit "A"</u>	<u>Area in Sq. Feet</u>	<u>Property Owners Affected</u>	<u>Due Developer Cost Per Sq. Ft. Local Sewer Ext.</u>	<u>Area Connection Fees Due City Utilities for Pierson Ditch Intercep- tor per Sq. Ft.</u>	<u>Due City Utilities Total Area Con- nection Fees</u>	<u>Total Project Cost</u>
Lot #1, Lehman Homestead) Lot #2 Lehman Homestead )	40,000	Developer	.11645	0.0068870523	\$ 275.48	\$ 4,933.50
Lot #3 Lehman Homestead	20,866	R. & V. Fox	"	"	143.71	2,573.55
Lot #4 Lehman Homestead	20,866	C. & C. Roth	"	"	143.71	2,573.55
Lot #5 Lehman Homestead	20,866	A. & E. Beck	"	"	143.71	2,573.55
Space "A"	22,400	H. & F. Weiteman	"	"	154.26	2,762.74
Space "B"	20,400	R. & R. Deermier	"	"	140.50	2,516.08
Space "C"	21,000	W. & N. Evans	"	"	144.63	2,590.08
Space "D"	18,500	W. W. Trostel	"	"	127.40	2,281.72
Space "E"	23,400	T & P. Pattison	"	"	161.16	2,886.09
Space "F"	21,800	R & D. White	"	"	150.14	2,688.75
 TOTALS	 <u>230,098 S.F.</u>				 <u>\$ 1,584.70</u>	 <u>\$ 28,379.61</u>

# KINNEY SHOES

## OFFSITE SANITARY SEWER



NORTHEAST 1/4 SECTION 33  
TOWNSHIP 31 NORTH, RANGE 13 EAST  
ST. JOSEPH TOWNSHIP

**ENGINEER:**  
**Z. K. TAZIAN ASSOC., INC.**  
710 S. BARR ST. FORT WAYNE, IND.

SHEET NO. 7 OF 7

4036

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION FOR KINNEY SHOES - OFFSITE

SANITARY SEWER

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

2-78-04-27

SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION FOR KINNEY SHOES, OFFSITE SANITARY SEWER

TO SERVE THE PROPOSED NEW KINNEY SHOE STORE, WHICH IS PLANNED FOR NORTH SIDE OF EAST STATE  
BLVD., 400' WEST OF MAPLECREST ROAD.

(AGREEMENT ATTACHED)

PRIOR APPROVAL REQUESTED FOR APRIL 18, 1978 COUNCIL MEETING

EFFECT OF PASSAGE CONSTRUCTION OF SEWER TO SERVE KINNEY SHOE STORE

EFFECT OF NON-PASSAGE INABILITY TO MEET PRIOR CONTRACTUAL OBLIGATIONS OF THE DEVELOPER

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER TO PAY ENTIRE COST AND EXPENSE

ASSIGNED TO COMMITTEE

EP

Public Works